

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES HINES,

Plaintiff,

No. CIV S-03-2385 GEB PAN P

vs.

SGT. NUCKLE, et al.,

Defendants.

ORDER AND

REVISED SCHEDULING ORDER

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Plaintiff is a state prisoner proceeding pro se with a civil rights action pursuant to 42 U.S.C. § 1983. Plaintiff has been granted leave to proceed with this action in forma pauperis pursuant to 28 U.S.C. § 1915.

On November 21, 2005, plaintiff filed a request for funds for a private investigator. The expenditure of public funds on behalf of an indigent litigant is proper only when authorized by Congress. Tedder v. Odel, 890 F.2d 210 (9th Cir. 1989). The in forma pauperis statute does not authorize the expenditure of public funds for investigators. See 28 U.S.C. § 1915.

On November 18, 2005, plaintiff filed a motion asking for permission to correspond with two inmates who are witnesses to the incidents at issue herein: Marcus Tucker, CDC #K-72601 and Michael Wilson, CDC #E-28332. In addition, plaintiff seeks an order

1 directing defendants to provide plaintiff with these inmates' present addresses so plaintiff may
2 correspond with them concerning this case.

3 This request presents logistical and security concerns, which also exist in the
4 alternative option, taking the inmate witnesses' depositions. In view of the logistical problems
5 inherent in the taking of a deposition within a prison, and pursuant to its authority to order such
6 terms as will provide for the safe and expeditious taking of depositions, this court denies
7 plaintiff's request to correspond with other inmate witnesses but grants plaintiff leave to proceed
8 with a deposition by written questions. If plaintiff chooses to proceed in this manner he may
9 submit a list of questions for each witness to this court, with appropriate copies served on
10 defendants, within thirty days from the date of this order. Defendants will then have thirty days
11 in which to object to any questions, and submit questions of their own. Plaintiff may object to
12 proposed cross-examination questions within the next fourteen days.

13 When the questions have been determined, the court will forward all permissible
14 questions to the deponent. The deponent shall write out answers to the questions on the forms
15 provided by plaintiff, swear to their truthfulness by verification, and return them to the court.
16 The clerk of the court will then forward copies of the answers to the parties. Counsel for
17 defendants are ordered to provide such assistance as is required within and without the prison to
18 effectuate this order. If redirect and recross-examination questions are desired by either party
19 under Fed. R. Civ. P. 31(a), the party shall notify the court forthwith and provision will be made
20 therefor.

21 Defendants will be directed to provide the court with the addresses of inmates
22 Marcus Tucker, CDC #K-72601 and Michael Wilson, CDC #E-28332 within fifteen days.

23 In light of this order, the discovery deadline will be extended from April 1, 2006
24 to September 1, 2006, solely for the purpose of completing the written depositions of inmate
25 witnesses Tucker and Wilson. The dispositive motion deadline will be extended from May 15,
26 2006 to December 1, 2006.

Accordingly, IT IS HEREBY ORDERED that:

1. Plaintiff's November 21, 2005 request for funds for a private investigator is denied.

2. Within fifteen days from the date of this order, defendants shall provide the court with the current addresses of Marcus Tucker, CDC #K-72601 and Michael Wilson, CDC #E-28332.

3. Plaintiff's November 18, 2005 motion is partially granted.

4. Plaintiff may submit written questions for direct examination of inmate witnesses Tucker and Wilson, with adequate space provided for their answers, within thirty days;

5. Defendants may object to the proposed direct questions and submit proposed written questions for cross-examination within the next thirty days;

6. Plaintiff may file objections to proposed cross-examination questions within the next fourteen days;

7. Upon determination of permissible questions by the court, the Clerk shall forward copies of the questions to the inmate witnesses;

8. Upon receipt of the questions, inmates Tucker and Wilson shall write out their answers in the form provided by plaintiff and return them to the court no later than fourteen days after service by the Clerk;

9. Upon receipt of the answers, the Clerk shall serve the parties with copies of the answers; and

10. The parties shall inform the court forthwith whether they wish to depose a witness further by redirect and/or recross-examination questions. Upon such notification the court will make provision for further questioning.

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1 11. The discovery deadline is extended from April 1, 2006 to September 1, 2006,
2 solely for the purpose of completing the written depositions of inmate witnesses Tucker and
3 Wilson. The dispositive motion deadline is extended from May 15, 2006 to December 1, 2006.
4 DATED: March 16, 2006.

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7 UNITED STATES MAGISTRATE JUDGE
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